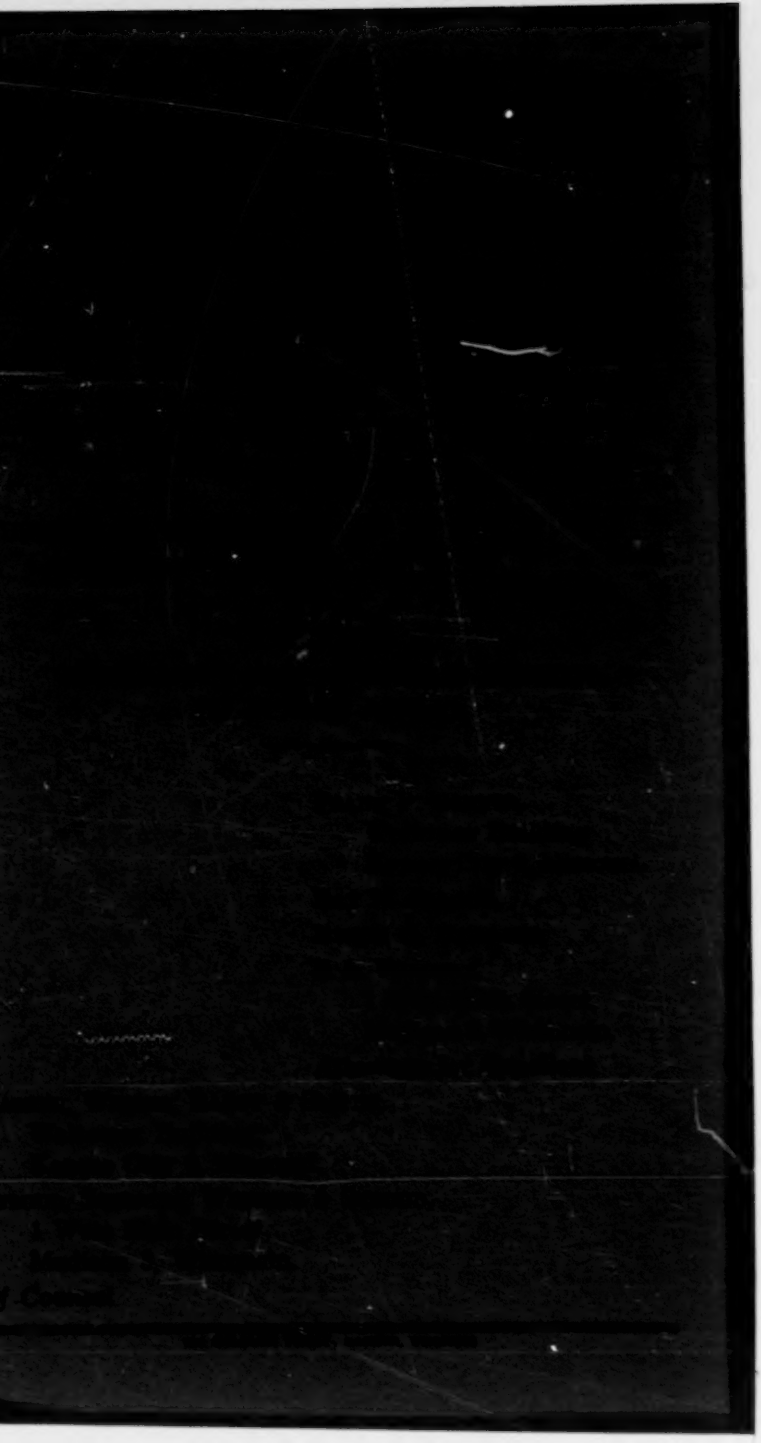

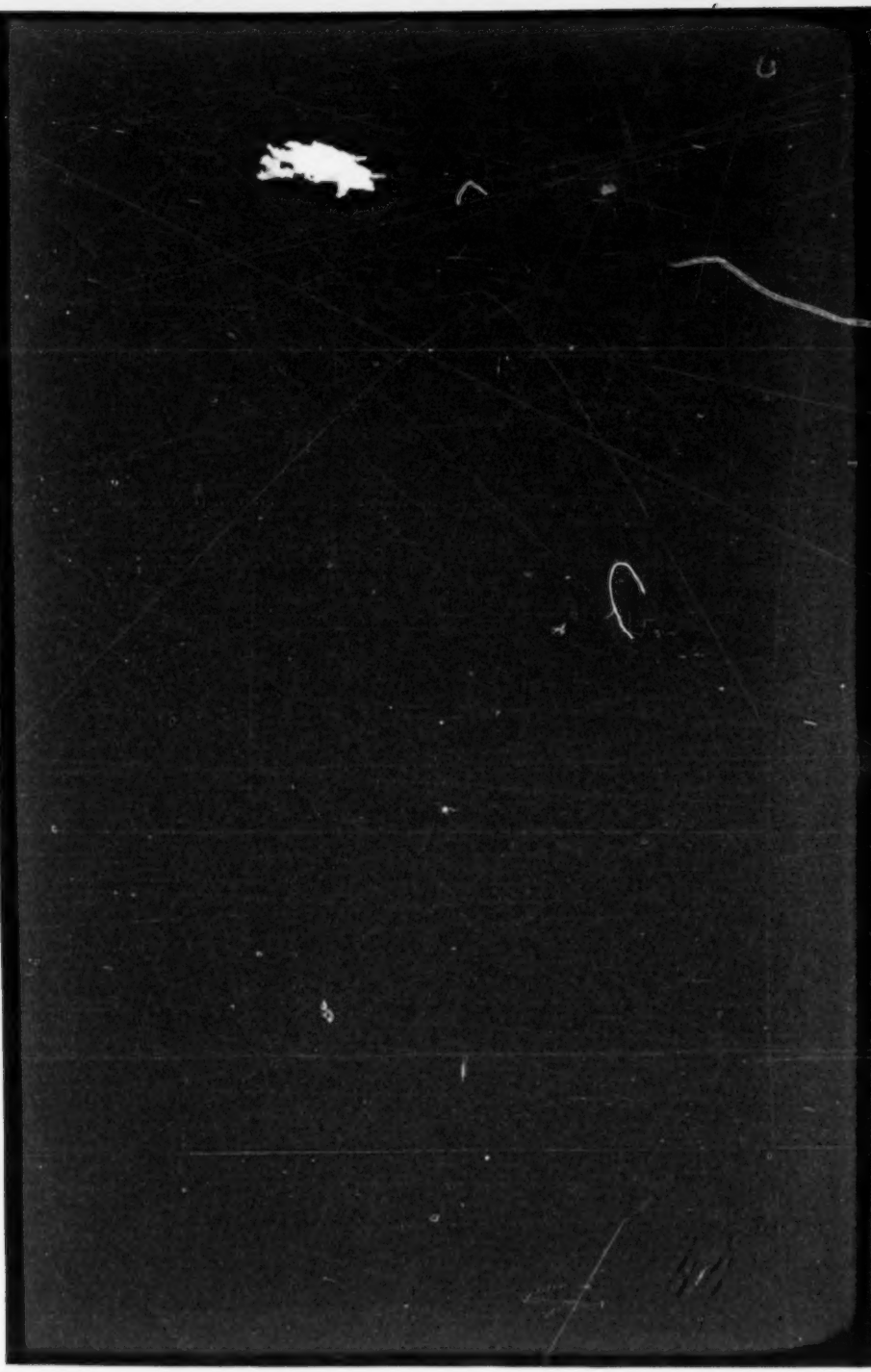

In the

Supreme Court of the United States

October Term, 1955

No. 501

CAMMIE B. HOLMAN,

Appellant,

vs.

GUERDON M. MATTHEWS,
Commissioner of Banks,

Appellee.

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS APPEAL

Appellee's brief in support of his motion to dismiss seems to assert that the only regulation involving appellant is the obtaining of a license and the payment of a $2 fee, which license, when obtained, "entitles him to roam the entire state 365 days" (Appellee's Brief, p. 7). This statement completely disregards the other and onerous burdens imposed on solicitors, as listed on page 8 of the Jurisdictional Statement and discussed on pages 20-26 thereof; particularly the requirements of furnishing a bond, maintaining a Wisconsin office where must be kept books and records for six years, filing annual reports, using only forms approved by Appellee, etc.

Further, Appellee's brief (in support of his motion to dismiss this appeal) states (p. 8) that "Appellant has made no attempt to show that the state statute complained of is

discriminatory against him; * * *" and again on the same page "Holman's failure to charge discrimination may be accepted as a concession that none exists, * * *."

On the contrary, Holman's complaint (par. 11) distinctly alleges that Sec. 218.04 is "discriminatory" (Record p. 8), and Appellant's Jurisdictional Statement, under the heading—"The statutory requirements discriminate against appellant's interstate solicitation" (p. 23), devotes three pages to demonstrating that the law does "create an obvious discrimination against non-residents such as appellant." (Jurisdictional Statement, p. 24.)

Appellee relies heavily on this Court's decision in *Breard v. City of Alexandria*, 341 U. S. 622, although that case was not mentioned in the decision of the Wisconsin Supreme Court. Plainly enough, the case is not in point.

There the ordinance upheld by the Court made it a misdemeanor for peddlers to call on occupants of private residences without having been requested or invited to do so. There was no prohibition against solicitation without prior invitation anywhere else than at private residences, there was no fee, license or other regulatory measure involved, and the usual methods of seeking business were left open.

The Court held that such invasion of private homes might reasonably be forbidden as a nuisance.

> "Unwanted knocks on the door by day or night are a nuisance or worse to peace and quiet."
>
> (341 U. S. at 627)

The ordinance was characterized as "legislation to protect the social, as distinguished from the economic, welfare of a community." (341 U. S. at 640.,

The court carefully distinguished the factual situation of house to house canvassing from the solicitation of orders with subsequent interstate shipment, and gave no indication that its decision was in any way contrary to the decisions holding invalid laws or ordinances requiring a license or the payment of fees for such solicitation. The court said:

> "While taxation and licensing of hawking or peddling, defined as *selling and delivering* in the state, has long been thought to show no violation of the Commerce Clause, solicitation of orders with subsequent interstate shipment has been immune from such exaction. These decisions have been explained by this Court as embodying a protection of commerce against discrimination made most apparent by fixed-sum licenses regardless of sales. Where the legislation is not an added financial burden upon sales in commerce or an exaction for the privilege of doing interstate commerce but a regulation of local matters, different considerations apply.
>
> "We think Alexandria's ordinance falls in the classification of regulation." (Italics supplied)
>
> *Breard v. Alexandria,* 341 U. S. 622, 638.

Furthermore, the late Chief Justice Vinson in his dissenting opinion noted that:

> "The Court does not today purport to overrule this line of decisions." (referring to the decisions from

Robbins v. Shelby Co. Tax Dist., 120 U. S. 489, to Nippert v. Richmond, 327 U. S. 416.

Breard v. Alexandria, 341 U. S. 622, 646.

Thus the ordinance in the *Breard* case was a very different matter from the statute challenged in the present appeal, which is clearly and exclusively a drastic regulation of a legitimate business for economic purposes, and as applied by the Wisconsin court to appellant and others similarly situated, is both discriminatory and prohibitive against interstate commerce. See Appellant's Jurisdictional Statement, pp. 20-26.

Breard merely holds that the commerce clause does not confer immunity from reasonable laws protecting the privacy of the citizens, any more than from other reasonable and non-discriminatory legislation for the protection of social, as distinguished from economic, welfare of the community. The present case is ruled by the "drummer" cases and others like them, which were not disturbed by the *Breard* decision. See Jurisdictional Statement, pp. 16-17, 26-28.

Robertson v. California, 328 U. S. 440, referred to on page 9 of the Appellee's Brief, is clearly distinguished on its facts as we point out on page 30 of our Jurisdictional Statement.

The purpose of the regulation in the *Robertson* case—to protect the public from fraud, misrepresentation and sharp practice on the part of insurance agents who counsel as to insurance, sell policies of insurance and collect the premium, can have no relevancy to the appellant's activities. Here the solicitor is not a counselor, sells nothing,

collects nothing, makes no contract and handles no funds. The solicitor is not a collector and is not engaged in the collection agency business, but merely solicits offers to assign accounts for collection.

It is respectfully submitted that the motion to dismiss should be denied, and probable jurisdiction noted.

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